DOCUMENT RESUME

ED 061 345 UD 012 160

AUTHOR Nakahara, Vernon K.
TITLE Court Decisions in Key Areas of School Desegregation.
INSTITUTION California Univ., Riverside. Western Regional School Desegregation Projects.
PUB DATE [71]
NOTE 16p.

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS *Ability Grouping; Court Litigation; Defacto Segregation; Educational Opportunities; Equal Education; Federal Aid; *Free Choice Transfer Programs; *Integration Litigation; Integration Methods; *Integration Plans; Integration Readiness; Public Schools; *School Integration; Supreme Court Litigation; Teacher Integration

ABSTRACT

What the legal responsibilities are surrounding school integration, and areas of desegregation in which the courts themselves appear to be unsure and confused can be determined by examining the numerous court decisions on problems related to school desegregation. It seems clear that delays under the "all deliberate speed" doctrine, or by other means, will no longer be permissible. Staff and teacher desegregation is mandatory in most school districts undertaking to desegregate their schools. "Freedom-of-choice" plans, as a tactic to delay or as a desegregation plan, are no longer considered as realistic means of achieving meaningful school desegregation. Financial assistance will no longer be given to those districts which fall below the minimum standards set by the Department of Health, Education and Welfare. Ability grouping, although not concretely decided upon yet, will not be sustained, as declared in the "Hobsen v. Hansen" case. More and more courts are recognizing the right to transfer. Finally, in the de facto segregation area, although not decided upon by the Supreme Court yet, many lower court decisions have suggested a strong trend toward requiring school officials to desegregate their schools, even if the segregation is caused by factors outside the jurisdiction of school authorities. (Author/JM)

intergroup

University of California, Riverside 92502

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY

ED 061 345

COURT DECISIONS IN KEY AREAS OF SCHOOL DESEGREGATION

BY VERNON K. NAKAHARA*

1. Introduction

What is Required?

When school officials are confronted with desegregation problems, they and others often ask the question, "What are the legal responsibilities surrounding school integration?", or "What have the courts held in this area of school desegregation?" These officials look to the courts to provide difficult but much needed answers. So far, the courts have addressed themselves to many of the perplexing issues involved in school desegregation, have provided some answers to their questions, and have left some unanswered.

The courts, have decided on numerous problems related to school desegregation. From these decisions it can be determined what is impermissible by law, and in which areas of desegregation the courts themselves appear to be unsure and confused.

De Facto - De Jure

By analyzing the decisions related to desegregation, it is necessary now, as in the past, to define "de facto" and "de jure" segregation. A "de jure" racially segregated school system is one in which a school board deliberately and willfully established school attendance regulations to enroll pupils in particular schools on strictly or primarily a racial or ethnic basis. A "de facto", racially or ethnically segregated school system is one in which pupils attend schools of a predominantly racial or ethnic sameness simply because they live in neighborhoods having this sameness. In the de jure school, racial or ethnic sameness is legislatively decreed, while in the de facto school racial or ethnic sameness is an incidental by-product of the neighborhood school.

While the end result is racial segregation, the manner in which this has occurred is different. One of the principle current legal issues is the extent to which the two separate approaches the law now takes in de jure and de facto cases will merge to a single approach.

VD012160

*Vernon Nakahara is Project Assistant, Berkeley Institute for Desegregation Problems, 1970-71.

II. Issues and Cases

To better understand the status of school desegregation today, and its many topical issues, it is important to review what has transpired in the past. The most logical starting point would be Brown v. Board of Education of Topeka.[1] This case marked the first major beginning of the Supreme Court's involvement and committment to school integration and has affected decisions handed down ever since.

The Brown case, however, was not an isolated case arising out of obscurity. Rather it was the culmination of a trend which began as early as 1938. In two separate cases the U. S. Supreme Court held that the totality of the educational experience must be considered. Thus the emphasis was placed more on core intangibles of the educational process. In Missouri ex rel. Gaines v. Canada[2] the doctrine of constitutional guarantee of equal educational opportunity was born. Here, out-of-state scholarship aid to Blacks was declared to be inadequate compliance with the constitutional mandate of equal educational opportunity. In Sweatt v. Painter,[3] the court ruled that Texas could not provide Black law students with an equal educational opportunity if they were confined to a segregated law school. A Black trained at the segregated school would be isolated from the individuals he would later be dealing with--lawyers, judges, witnesses, jurors and other public officials, most of whom would be white. The Court further enlarged the principle of equal educational opportunity in McLaurin v. Oklahoma State Regents,[4] in which a Black graduate student was admitted to an otherwise all white graduate school, but was isolated from white students within the school. Again the Court relied on the intangible considerations to condemn this action because "such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views, with other students . . ."

Then on May 17, 1954, the Supreme Court handed down the historic Brown v. Board of Education[5] opinion. Chief Justice Earl Warren, speaking for a unanimous Court, held that "separate educational facilities are inherently unequal," and violate the 14th Amendment. Simultaneously, the Court overturned the "separate but equal" doctrine announced in Plessy v. Fergusen.[6] Here, the Court said that separate but equal facilities set an unacceptable standard for determining equal protection under the law. Subsequent opinions soon underscored the permanence and scope of the newly announced constitutional doctrine.[7]

After declaring in Brown I that segregated education denied the constitutional guarantee of equal protection, a year later in Brown II[8] the Court addressed itself to the question of what remedy should be granted. The formula adopted by the Court was requiring a "good faith" start in the transformation from a dual to a unitary school system, with compliance being accomplished with "all deliberate speed."

A. All Deliberate Speed

For eight years after its implementation decision, the Court refused to review any case in which questions were raised concerning the validity of pupil placement regulations or the appropriateness of applying the doctrine of exhaustion of administrative remedies to frustrate suits seeking to vindicate the right to a unitary school education. However, as time passed and no appreciable progress was made, the Court began to manifest its impatience.

Thus, in 1962, it announced in Bailey v. Pattersen[9] that no substantial question was involved as to the validity of state laws requiring segregation. State laws imposing segregation was unlawful. The issue, the Court stated, had been resolved in Brown I. The following year the Court ruled that the doctrine requiring exhaustion of administrative remedies before relief could be sought in federal courts had no application to questions of school desegregation.[10] In Griffin v. Prince Edward County Board of Education,[11] which was decided in 1964, the Court stated that the time for mere deliberate speed had run out. A year later, in Bradley v. School Board of Richmond,[12] it announced that "delays in desegregating school systems are no longer tolerable." The declaration announced in Griffin and Bradley was reaffirmed in Green v. City School Board[13] in 1968.

In Alexander v. Holmes City Board of Education[14], in 1969, the Supreme Court vacated a lower court order which had granted additional time for Mississippi school districts to implement racial desegregation plans. The Court reemphasized its holding in the Green case by noting that the delays of desegregating public schools under the old, discredited "all deliberate speed" doctrine are "no longer constitutionally permissible." The Court clearly indicated that judicial patience with school authorities pleading for more time to effectuate desegregation was at an end. Finally, on January 14, 1970, it refused to delay desegregation plans beyond February 1, 1970, in Carter v. West Feliciana Parish School Board.[15]

B. Attempts to Defeat Desegregation

The "all deliberate speed" doctrine had been used by opponents of school desegregation to delay and to ultimately hopefully defeat school integration. However, other techniques have been used by these same opponents to defeat desegregation, but these the courts have generally not sustained.

In Poindexter v. Louisiana Financial Assistance Commission,[16] Griffin v. State Board of Education,[17] Coffey v. State Educational,[18] and Brown v. South Carolina State Board of Education,[19] the Supreme Court declared that "tuition

grant" laws were unconstitutional as an effort to get around desegregation orders. In Keyes v. School District Number 1, Denver, Colorado,[20] the Court said that the desirability of developing public support for a plan designed to redress de jure segregation cannot be justification for delay in implementing the plan. Furthermore, in U. S. v. Plaguemines Parish School Board[21] the Supreme Court prohibited the transfer of public school property for use by private schools to defeat desegregation orders.

In Swann v. Charlotte-Mecklenburg Board of Education,[22] decided on April 26, 1971, Chief Justice Warren Burger, speaking for a unanimous court, ruled that the North Carolina statutory prohibition against assignment of any student to any school on account of race or for purpose of establishing racial ratio in schools unconstitutionally hampers local authorities in implementing desegregation plans necessary to remedy violations of 14th Amendment rights. Furthermore, the Court held that neither the Equal Protection Clause nor Title IV of the 1964 Civil Rights Act bars county school boards from carrying out their affirmative duty to disestablish dual school systems, or from taking race of elementary school children into account in drawing attendance lines that require busing of children to achieve racial balance.

The Supreme Court in Lee v. Nyquist,[23] decided on May 3, 1971, took another giant step forward in its efforts to change dual school systems into unitary ones. Here, the Court reaffirmed a lower court ruling that New York's anti-busing law, which served as a pattern for several anti-busing laws enacted in a number of southern states, is unconstitutional. Specifically, the lower court decision held that the New York statute prohibiting state education officials and appointed school boards from assigning students, or establishing, reorganizing, or maintaining school districts, school zones or attendance units for the purpose of achieving racial equality in attendance is unconstitutional as violative of equal protection by invidiously discriminating against efforts to achieve racial balance. The Court said that it will no longer tolerate statutes which interfere with desegregation efforts.

The California Supreme Court in San Francisco School District v. Johnson[24] ruled that, Section 1009.5 of the Education Code, the anti-busing statute (Wakefield Bill), does not prohibit a school district from assigning pupils to any school for purposes of racial integration.[25]

C. Teacher and Staff Desegregation

Contrary to what most people believe, the Brown decision of 1954 had very little positive effect on school staffing prior to 1966. As a matter of fact, the U. S. Supreme Court inadvertently delivered a temporary setback

to the role of the Black educator in American public schools. Because the average parent, both Black and White, tended to blame the poor conditions of these schools on Black teachers and administrators, these educators were generally dismissed or downgraded as "Black" schools were discontinued. Furthermore, these Black teachers and administrators rarely received the proper training their white counterparts had, for they too were victims of the dual school systems.

It is somewhat ironic that today white teachers and administrators are being blamed for the failure of Black schools, and proponents of quality education are now calling for Black teachers and administrators as a solution to school desegregation problems. This certainly suggests that skin color should not be the motivating factor in selecting competently trained teachers and administrators.

In most cases desegregation applied only to students, and until the advent of the U. S. Office of Education's revised policy statements of 1968, faculties, especially in the Deep South, remained primarily as before--all Black for predominantly Black schools and all white for predominantly white schools.

Fear of loss of U. S. Department of Health, Education, and Welfare funds and fear of monetary awards by the courts had caused many boards of education to retain their Black educators, or at least retain enough of them to prevent a successful charge of discrimination. Thus, "tokenism" which was once reserved for students now applied to Black educatiors. However, this and other similar practices have been generally outlawed by the courts.

U. S. v. Jefferson City Board of Education,[26] which, in effect, declared legal the hotly disputed HEW "Guidelines for School Desegregation," did much to reduce and eventually reverse the trend toward tokenism in staffing. The Court stated, "School authorities have an affirmative duty to integrate faculties as well as facilities. . ." The Court further held that faculty integration, one key to the desegregation process, is essential to student desegregation.

Moreover, in U. S. v. Greenwoom Municipal Separate School District,[27] the court held that under the Civil Rights Act of 1964, school boards had the burden of integrating faculty and staff of each school within the district so that it could not be identified as tailored for students of a particular race. In U. S. v. Montgomery City Board of Education,[28] a leading case in this area, the Supreme Court affirmed a district court order requiring that teachers of a public school system be assigned to schools on a racially balanced basis. Specially, the Court approved a ratio of white to Black teachers which is "substantially the same" as that which exists in the school system as a whole.

In probably the most thorough and far-reaching decision yet to be decided on staff balance, District of Columbia Judge Skelly Wright in Hobson v. Hansen[29] held that assignment of incoming teachers in the public schools must proceed on

a color-conscious basis to insure substantially rapid teacher integration in every school. In addition, Judge Wright ordered that substantial reassignment of present teachers, including tenured staff, will be mandatory for rapid teacher integration in every school, if other measures do not quickly achieve sufficient faculty integration in the public schools. As important, Judge Wright also added new dimensions for consideration in achieving staff balance. He looked at certification status, academic preparation, years of experience, presence or absence of auxiliary personnel, and concluded that to give children in low income areas a disproportionate share of non-certified and temporary teachers, while denying them the proportionate share of teachers with advanced degrees, serves to deny them equal protection of the law.

Finally, in Swann v. Charlotte-Mecklenburg Board of Education,[30] decided on April 20, 1971, the Supreme Court reaffirmed its decision in U. S. v. Montgomery City Board of Education,[31] which set as a goal a plan of faculty assignment in each school with a ratio of white to Black faculty members substantially the same throughout the system. The Court rejected the contention that the Constitution requires that teachers be assigned on a "color blind" basis. Further, the Court stated that,

> Independent of student assignment, where it is possible to identify a "white school" or a "Negro school" simply by reference to the racial composition of teachers and staff. . .a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown.[32]

D. Freedom-of-Choice Plan

Under "freedom-of-choice" school desegregation plans, each student, or his parents, chooses the school which he attends. Although such plans were at first accepted by the HEW Department as valid means of eliminating dual systems, it was clear by 1968 that their effectiveness was in many instances blunted through economic or physical intimidation which restricted "free choice," particularly that of Black students. In fact, proponents of school desegregation had charged that "freedom-of-choice" plans were one of many techniques used to avoid meaningful desegregation.

In Green v. City School Board,[33] decided in 1968, the Supreme Court said that where a "freedom-of-choice" plan offers real promise of achieving a unitary, nonracial system, there might be no objection to allowing it to prove itself in operation. But where there are reasonably available other ways, such as zoning, promising speedier and more effective conversion to a unitary system, "freedom-of-choice" is not acceptable. The Court said,

> The burden in a school board today is to come forward with a plan (for pupil racial desegregation) that promises realistically to work, and promises realistically to work now.

A year later, the Supreme Court, in a series of cases,[34] reaffirmed its holding in Green, rejecting "freedom-of-choice" plans because they failed to produce racial integration. In Jackson v. Marrell School District Number 22,[35] the Court held that school boards have the affirmative duty to abolish state-compelled educational segregation and to establish in its place a unitary, nondiscriminatory school system. The "freedom-of-choice" plan would have to be abandoned in favor of some other plan in school desegregation cases where it had not converted the dual school system into a unitary system in which separate tracks for Black and white students were no longer identifiable.

E. Financial Aid to Education

In Brown I, the Supreme Court held that racial discrimination in public schools is unconstitutional and that the primary responsibility for assessing and solving the problems inherent in desegregating public schools is the school authorities'. Notwithstanding this constitutional mandate, nine years later only token progress had been made toward the desegregation of public schools in many areas of the South.[36] This situation contributed to the enactment of Titles IV and VI of the Civil Rights Act of 1964,[37] which were intended to expedite desegregation. To make Title VI effective, the Department of Health, Education and Welfare promulgated regulations which conditioned a state's eligibility for federal funds upon compliance with provisions of the Act.[38] State school authorities could satisfy this condition by obtaining a federal court order providing a plan for desegregation or, in the alternative, by submitting an acceptable desegregation plan to the Commissioner of Education. Pursuant to this regulation, the Office of Education, in March, 1962, and in April, 1965, issued guidelines promulgating a standard of desegregation which established the fall of 1967 as the target date for total desegregation. To avoid having to implement the guidelines many school boards sought refuge in the federal courts and obtained orders providing for desegregation plans which occasionally differed significantly from the guidelines. However, in Singleton v. Jackson Municipal Separate School District,[39] the Fifth Circuit Court of Appeals held that the HEW guidelines are only the minimum standard to be applied by the federal courts in evaluating school board desegregation plans, and that school authorities "are under the constitutional compulsion of furnishing a single, integrated school system."

Furthermore, in U. S. v. Jefferson City Board of Education,[40] the Fifth Circuit Court of Appeals held that it is national policy that formerly de jure segregated public school systems based on dual attendance zones must shift to unitary, nonracial systems, with or without federal funds. And because court approval of a desegregation plan establishes eligibility for federal aid, court standards should not be lower than those of the Department of HEW. Than, a year later in Board of Public Instructions of Palm Beach City, Florida v. Cohen,[41] the Supreme Court held that the Department of HEW could refuse to issue federal

funds to a school district pending its investigation of whether or not the district was implementing a court-ordered desegregation plan. However, in Board of Public Instructions of Taylor City, Florida v. Finch,[42] the Supreme Court held that the Department of HEW could order the termination of federal funds in programs in which racial segregation or discrimination existed, but could not order a "blanket" federal fund cutoff.

F. Ability Grouping: The New Segregation

A "tracking" system classifies and programs the instruction of students along the lines of their supposed abilities. This kind of ability grouping, though not defective in concept, often in execution works to the detriment of the poor or minority-group pupil.[43] Children from this underclass are in disproportionate number, thus locked into the lower tracks at an early stage because of the culturally-biased tests, which favor the middle class white child, with little likelihood of movement between tracks. This situation is often found in previously de facto segregated schools that have recently integrated. The resulting pattern is one of internal desegregation of what are now at least nominally "integrated" schools.

One federal court has indicated that when the tracking system builds in this structural bias it is amenable to legal attack. In Hobson v Hansen,[44] Judge Skelly Wright held that while ability grouping is an accepted educational practice, where disadvantaged children, primarily Black, are relegated to lower tracks based on intelligence tests largely standarized on white middle-class children, and there given reduced education, such disadvantaged children are denied equal educational opportunity.

G. Right to Transfer

If the school board claims that there are insufficient funds to correct deficiencies in Black schools,[45] the immediate alternative may be to close them and assign the students to predominantly white schools which are not deficient. If the deficient Black schools cannot be closed, any Black student there should have the right to transfer into a predominantly white school pending the full correction of the deficiencies. In Bell v. the School City of Gary, Indiana,[46] however, the court appeared to hold contrary. Although plaintiffs proved that certain academic courses were not available to Black schools, but were present in all predominantly white schools, the court commented that the curriculum was made up in response to student demands and that if the demand for some courses in a given school was inadequate, the school board was justified in not providing those courses. On the other hand, Bell did not take the next step and place responsibility on the school board to permit as many Black students as possible to transfer to the predominantly white schools which had the courses the Black schools lacked. Thus in U. S. v. Jefferson City Board of Education,[47] the court specifically required a Black student be permitted to transfer under these circumstances. The court further

stated that it reaffirmed its holding in Singleton v. Jackson Municipal Separate School District.[48] which held that children in still-segregated grades in Black schools "have an absolute right, as individuals, to transfer to schools from which they were excluded because of their race."[49]

H. De Facto Segregation

In the past, in all cases involving a direct test of the constitutionality of de facto segregation of schools, the U. S. Supreme Court has denied certiorari and left undisturbed the decisions of the lower courts that there is no constitutional duty to racially balance the pupil enrollment of de facto segregated schools.[50] In Deal v. Cincinnati Board of Education the court held that the city board of education did not have a constitutional duty to establish a program to balance races in school systems where imbalance had resulted from racial concentrations in school neighborhoods and not from any act of discrimination on the part of the board. The Constitution imposed no duty on city boards of education to bus white and Negro children away from districts of their residences in order than racial complexion would be balanced in each of many public schools in the city. The school board has no duty to remedy segregated housing patterns resulting from actions of public and/or private agencies.[51]

Moreover, in Briggs v. Elliott,[52] the district court by dictum declared that "The constitution, in other words, does not require integration. It merely forbids discrimination."[53] However, in Singleton v. Jackson Municipal Separate School District[54] the Fifth Circuit said in a footnote:

> In retrospect, the second Brown opinion clearly imposes on public authorities the duty to provide an integrated school system. Judge Parker's well known dictum. . .in Briggs v. Elliott. . .should be laid to rest. It is inconsistent with Brown and later development of decisional and statutory law in the area of civil rights.[55] Furthermore, in a very recent case the Court again stated that a state must "take affirmative action to reorganize its school system by integrating the students, faculties, facilities and activities."[56]

In addition, in Taylor v. Board of Education of New Rochelle,[57] one of the few de facto school segregation cases in which plaintiffs were successful, the court found that there had been active gerrymandering until 1934 and a transfer plan until 1949 which permitted white students to leave predominantly Black zones. In essence, it held that once there had been active gerrymandering, the school board had an obligation to make affirmative efforts to relieve racial imbalance in schools even though the imbalance which had occurred since 1949 was largely due to changed residential patterns. Here, the court brought the racial imbalance of one school within the condemnation of Brown I. Then,

In 1963, the California Supreme Court, in Jackson v. Pasadena City School District, by dictum held that,

> The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its causes.

Furthermore, in 1965, Chief Judge Sweeney of the U. S. District Court for the District of Massachusetts in Barksdale v. Springfield School Commission squarely held that a state may be required to relieve racial imbalance in the public schools even in a de facto situation.

> The defendants argue, nevertheless, that there is no constitutional mandate to remedy racial imbalance. . . But that is not the question. The question is whether there is a constitutional duty to provide equal educational opportunities for all children within the system. While Brown answered that question affirmatively in the context of coerced segregation, the constitutional fact--the inadequacy of segregated education--is the same in this case, and I so find. It is neither just nor sensible to proscribe segregation having its basis in affirmative state action while at the same time failing to provide a remedy for segregation which grows out of discrimination in housing, or other economic or social factors. Education is tax supported and compulsory, and public school educators, therefore, must deal with inadequacies within the educational system as they arise, and it matters not that the inadequacies are not of their making. This is not to imply that the neighborhood school policy per se is unconstitutional, but that it must be abandoned or modified when it results in segregation in fact.[58]

Furthermore, the decisions of several trial courts hearing de facto cases have provided springboards by which the issue of de facto segregation will again come into view of the U. S. Supreme Court.[59] Three of these cases held that there is a point reached where the de facto school system puts upon itself the cloak of de jure segregation. That is, (1) where faculties are deliberately segregated or (2) where "slavish" adherence to a strict "neighborhood school" policy in the assignment of students to schools obtains and no "busing" of students is permitted, such de facto segregation takes on a constitutional significance as a violation of the 14th Amendment.

III. Summary

It seems clear that delays under the "all deliberate speed" doctrine, or by any other means, will no longer be permissible. Staff and teacher desegregation is mandatory in most school districts undertaking to desegregate their

schools. "Freedom-of-choice" plans, as a tactic to delay or as a desegregation plan, are no longer considered as realistic means of achieving meaningful school desegregation. Financial assistance will no longer be given to those districts which fall below the minimum standards set by the Department of HEW. Ability grouping, although not concretely decided upon yet, will not be sustained, as declared in the Hobsen v. Hansen case. More and more courts are recognizing the right to transfer. Finally, in the de facto segregation area, although not decided upon by the U. S. Supreme Court yet, many lower court decisions have suggested a strong trend toward requiring school officials to desegregate their schools, even if the segregation is caused by factors outside the jurisdiction of school authorities.

In 1971, this country is moving like a glacier toward the goal of equal educational opportunity, uncertain of its direction and wavering in its resolve. Cases now before the Supreme Court will undoubtedly have major, far-reaching implications. But the effect of these decisions, as of all the preceding ones, will depend upon the decision of the American people, especially school officials, on improving the system of public education to the point where equal educational opportunity is no longer a dream.

Footnotes

1. Brown v. Board of Education of Topeka, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873, (1954).

2. Missouri ex rel. Gaines v. Canada, 305 U. S. 337, 59 S. Ct. 232, 83 L. Ed. 208, (1938).

3. Sweatt v. Painter, 339 U. S. 629, 70 S. Ct. 898, 94 L. Ed. 1114, (1950).

4. McLaurin v. Oklahoma State Regents, 339 U. S. 637, 70 S. Ct. 851, 94 L. Ed. 1149, (1950).

5. Brown, op. cit., fn. 1.

6. Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256, (1896).

7. Segregation was struck down in public parks (Watson v. Memphis, 373 U. S. 526 (1963); in intrastate (Gayle v. Browder, 352 U. S. 903 (1956) and interstate commerce (Boynton v. Virginia, 364 U. S. 454 (1960); at public golf courses (Holmes v. City of Atlanta, 350 U. S. 879 (1955) and other recreational facilities (Watson v. Memphis, 373 U. S. 526 (1963); (Mayor and City Council of Baltimore City v. Dawson, 350 U. S. 877 (1955); in airports (Turner v. Memphis, 369 U. S. 350 (1962) and interstate bus terminals (Thomas v. Mississippi, 380 U. S. ____ (1965); in libraries (Brown v. Louisiana, 383 U. S. 131 (1966); and in the facilities of public buildings (Burton v. Wilmington Parking Authority, 365 U. S. 715 (1961); and courtrooms (Johnson v. Virginia, 373 U. S. 61 (1963); unlawful discrimination was found in the listing of candidates for public office by race on the ballot (Anderson v. Martin, 375 U. S. 399 (1964); in the Southern custom of addressing Black witnesses by their first name (Hamilton v. Alabama, 376 U. S. 650 (1964); and in making marriage (Loving v. Virginia. 388 U. S. 1 (1967) and sexual relations (McLaughlin v. Florida, 379 U. S. 184 (1964) between blacks and whites a crime.

8. Brown v. Board of Education of Topeka, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, (1955).

9. Bailey v. Patterson, 369 U. S. 31, 82 S. Ct. 549, 7 L. Ed. 2d. 512, (1962).

10. McNeess v. Board of Education, 373 U. S. 668, 83 S. Ct. 1433, 10 L. Ed. 2d. 622, (1963).

11. Griffin v. Prince Edward County Board of Education, 377 U. S. 218, 84 S. Ct. 1226, 12 L. Ed. 2d. 256, (1964).

12. Bradley v. School Board of Richmond, 382 U. S. 103, 86 S. Ct. 224, 15 L. Ed. 2d. 187, (1965).

13. Green v. County School Board of New Kent County, Va., 391 U. S. 430, 88 S. Ct. 1689, 20 L Ed. 2d. 716, (1968).

14. Alexander v. Holmes City Board of Education, 396 U. S. 19, 90 S. Ct. 29, 24 L. Ed. 2d 19, (1969).

15. Carter v. West Feliciana Parish School Board, 396 U. S. 226, 90 S. Ct. 467, 24 L. Ed. 2d. 382, (1969).

16. Poindexter v. Louisiana Financial Assistance Commission, 296 F. Supp. 686, (1968), aff'd 393 U. S. 17, 89 S. Ct. 48, 21 L. Ed. 2d. 16.

17. Griffin v. State Board of Education, 296 F. Supp. 1178, (1969).

18. Coffey v. State Educational Finance Commission, 296 F. Supp. 1389, (1969).

19. Brown v. South Carolina State Board of Education, 296 F. Supp. 199, (1969).

20. Keyes v. School District No. 1, Denver, Colorado, 396 U. S. 1215, 90 S. Ct. 12, 24 L. Ed. 2d. 37, (1969).

21. Plaquemines Parish School Board v. U. S., 415 F. 2d 817, (1969).

22. Swann v. Charlotte-Mecklenburg Board of Education, 39 U. S. L. W. 4437, (U. S. April 20, 1971).

23. Lee v. Nyquist, 318 F. Supp. 710, (1970).

24. San Francisco School District v. Johnson.

25. This ruling has been appealed to the U. S. Supreme Court.

26. U. S. v. Jefferson City Board of Education, 372 F. 2d 836, 862 (5th Cir. 1966), aff'd on rehearing, 380 F. 2d. 385 (5th Cir.), aff'd, 386 U. S. 1001, 87 St. Ct. 1342, (1967).

27. U. S. v. Greenwood Municipal Separate School District, 406 F. 2d. 1086, (1969).

28. U. S. v. Montgomery City Board of Education, 395 U. S. 225, 89 S. Ct. 1670, 23 L. Ed. 2d. 263, (1969).

29. Hobson v. Hansen, 269 F. Supp. 401, (D.D.C. 1967), cert. dism. 393 U. S. 801, 89 S. Ct. 40, 21 L. Ed. 2d. 85.

30. Swann v. Charlotte-Mecklenburg op. cit., fn. 21.

31. U. S. v. Montgomery, op. cit., fn. 28.

32. Swann v. Charlotte-Mecklenburg, op. cit., fn. 21, p. 4442.

33. Green v. City School Board, op. cit., fn. 13.

34. U. S. v. Lovett, 416 F. 2d. 386, (1969); Davis v. Board of School/Comm. of Mobile County, 414 F. 2d. 609, (1969); U. S. v. Board of Education of Lincoln County, 301 F. Supp. 1024, (1969); Moses v. Washington Parish School Board, 302 F. Supp. 362, (1969); Kelley v. Altheimer, Arkansas Public School District No. 32, 297 F. Supp. 753, (1969); U. S. v. Hirds County School Board, 417 F. 2d. 852, (1969); but, cf., U. S. v. Board of Education of Bladwin County, Georgia, 417 F. 2d. 848, (1969).

35. Jackson v. Marrell School District No. 22, 416 F. 2d. 380, (1969).

36. In the school year of 1963-64 only 1.17 percent of the Black children in the South were attending school with white children. U. S. v. Jefferson County Board of Education, 372 F. 2d. 836, app. B (5th Cir. 1966).

37. 42 U. S. C. Sections 2000c, 2000d(4). Title IV authorizes the Office of Education to give technical and financial assistance to schools attempting to desegregate; Title VI provides that federal aid and assistance shall be denied to school systems practicing racial discriminations.

38. 45 C. R. F. Section 80.4(a)(1), (1964): "Every application for federal financial assistance to carry out a program to which this part applies. . . shall, as a condition to its approval. . .contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part."

39. Singleton v. Jackson Municipal Separate School District, 355 F. 2d. 865 (5th Cir. 1966). See Kemp v. Beasley, 352 F. 2d. 14, (8th Cir. 1965); Smith v. Board of Education of Morrilton School District No. 32, 365 F. 2d. 770, (8th Cir 1966).

40. U. S. v. Jefferson, op. cit., fn. 26.

41. Board of Public Instructions of Palm Beach County, Florida v. Cohen, 413 F. 2d. 1201, (1969).

42. Board of Public Instructions of Taylor County, Florida v. Finch, 414 F. 2d. 1068, (1969).

43. See "Public School Segregation and Integration in the North," 4 J. Intergroup Rel. 71-73, (1963).

44. Hobson v. Hansen, op. cit., fn. 29, 443-93.

45. Griffin v. Board of Supervisors of Prince Edward County, 377 U. S. 218, 84 S. Ct. 1226, 12 L. Ed. 2d. 256, (1964). It is no defense once a denial

of equal protection is established that the school board does not have sufficient funds to correct the denial. In Griffin, the court merely added the tax authorities as parties-defendant and ordered them to raise sufficient funds to provide equal protection for Black students.

46. Bell v. the School City of Gary, Indiana, 213 F. Supp. 819, (1963), cert. den. 377 U. S. 924, 84 S. Ct. 1223, 12 L. Ed. 2d. 216.

47. U. S. v. Jefferson, op. cit., fn. 26.

48. Singleton v. Jackson, op. cit., fn. 39.

49. See also Rogers v. Paul, 382 U. S. 198, 86 S. Ct. 358, 15 L. Ed. 2d. 265, (1965); and Taylor v. Board of Education of New Rochelle, 295 F. 2d. 26, (2nd Cir. 1961), where Judge Kaufman ordered free transfer from a segregated school to other schools where space was available.

50. Sealy v. Department of Public Instruction of Pennsylvania, 252 F. 2d. 898, (1958), cert denied, 356 U. S. 975, (1958); Bell v. School City of Gary, Indiana, 324 F. 2d. 209, (1963). cert. denied. 377 U. S. 924, (1963); Downs v. Board of Education, 336 F. 2d. 988, (1964), cert. denied, 380 U. S. 917, (1965); and Deal v. Cincinnati Board of Education, 369 F. 2d. 55, (1966), cert. denied, 389 U. S. 847, (1967).

51. See Downs and Bell cited supra.

52. Briggs v. Elliot, 132 F. Supp. 776 (E. D. S. C. 1955).

53. Ibid., 777.

54. Singleton v. Jackson, op. cit., fn. 39.

55. Ibid., 870.

56. United States v. Jefferson County Board of Education, op. cit., fn. 26.

57. Taylor v. Board of Education of New Rochelle, op. cit., fn. 49.

58. Barksdale v. Springfield School Commission, 237 F. Supp. 543, 546 (D. Mass. 1965); also see U. S. v. Jefferson County Board of Education, which stated in dictum that Brown I points toward a duty to integrate de facto segregated schools.

59. Spangler v. Pasadena City Board of Education, 311 F. Supp. 501, (1970), no appeal filed; Davies v. School District of City of Pontiac, Michigan, 309 F. Supp. 734, (1970), now on appeal; and Crawford v. Los Angeles Unified School District, Los Angeles Superior Court No. 822854, now on appeal to California Court of Appeals.

Bibliography

1. Bickel, Alexander, "The Decade of School Desegregation: Progress and Prospect," Columbia Law Review, 60 (1964), 193-229.

2. Burns, W. Haywood and Clark, Leroy D., "The Realpolitik of Racial Segregation in Northern Public Schools: Some Pragmatic Approaches," Harvard Law Review, 14 (1968), 217-240.

3. Carter, Robert L., "The Law and Racial Equality in Education," Journal of Negro Education, 37 (1968), 204-211.

4. Carter, Robert L., "The Warren Court and Desegregation," Michigan Law Review, 67 (1968), 236-248.

5. "De Facto School Segregation and the Law: Focus San Diego," San Diego Law Review, 5 (1968), 57-82.

6. Ethridge, Samuel B., "Court Decisions: Impact on Staff Balance," Educational Leadership, 26 (1968), 235-237.

7. Fiss, Owen, "Racial Imbalance in the Public Schools: The Constitutional Concepts," Harvard Law Review, 78 (1965), 564.

8. Fuller, Edgar, "The Impact of Court Decisions on Educational Strategies," Educational Leadership, 26 (1968), 227-231.

9. "Guidelines on Trial," American Education, 3 (1967), 18-20.

10. Kaplan, John, "Segregation Litigation and the Schools - Part I: The New Rochelle Experience," and "The General Northern Problem - Part II," Northwestern University Law Review, March-April and May-June, 1963.

11. Redfern, George B., "Court Decisions: The School Administrator's Dilemma," Educational Leadership, 26 (1968), 232-234.

12. "School Authorities Have Affirmative Duty To Integrate School System," Vanderbilt Law Review, 20 (1967), 1336-1341.

13. Walker, James, "Constitutionality of Adventitious Segregation in the Public Schools," University of Illinois Law Forum, (1967), 680-689.

14. Weinberg, Meyer, "The Education of the Minority Child," Integrated Education Associates, 1970, 303-325.

15. Wright, J. Skelly, "Public School Desegregation: Legal Remedies for De Facto Segregation," New York University Law Review, April, 1968.